

Appeal from decision of Montana State Office, Bureau of Land Management, declaring an unpatented lode mining claim abandoned and void. M MC 49395.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Administrative Authority: Generally -- Constitutional Law: Generally -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Department of the Interior, as agency of executive branch of Government, is not a proper forum to decide whether or not the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

APPEARANCES: William O. Bahny, pro se.

## OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

William O. Bahny appeals from a decision dated April 20, 1981, wherein the Montana State Office, Bureau of Land Management (BLM), declared the Papa Bear lode mining claim, M MC 49325, abandoned and void because of appellant's failure to file timely evidence of assessment work performed during the assessment year ending September 1, 1980, or a notice of intention to hold the claim, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1(a).

The claim was located in 1974. A copy of the location notice and an affidavit of assessment work were filed with BLM on October 22, 1979.

The evidence of assessment work in question, duly recorded in Jefferson County, Montana, was transmitted in an envelope postmarked December 31, 1980, from Helena, Montana, and addressed to the BLM State Office in Billings, Montana, where it was received on January 2, 1981. The BLM decision stated that the evidence of 1980 assessment work was not received prior to December 31, 1980, as required by the statute, and so returned it, and declared the claim abandoned and void pursuant to 43 CFR 3833.4.

Appellant argues that abandonment is a matter of intention, a question of fact for determination by a jury. He avers that he has no intention of abandoning his Papa Bear claim. He also argues that the taking of his property without due process of law suggests the unconstitutionality of FLPMA.

[1] With respect to mining claims located prior to October 21, 1976, the regulation, 43 CFR 3833.2-1(a) requires:

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Under FLPMA and the implementing regulations, evidence of appellant's assessment work for the assessment year ending September 1, 1980, or notice of intent to hold the claim was due to be filed with BLM on or before December 30, 1980. The Board has held repeatedly that where the required documents are not timely filed, the mining claims are properly declared abandoned and void consonant with FLPMA which states: "[F]ailure to file such instruments as required \* \* \* shall be deemed conclusively to constitute an abandonment of the mining claim \* \* \* by the owner." FLPMA, section 314(c), 43 U.S.C. § 1744(c) (1976).

Filing only in the local county recorder's office does not obviate the need for strict compliance with the time limits set out in 43 CFR Subpart 3833.

[2] Appellant's arguments on constitutional law cannot be considered by this Board. The Department of the Interior as an agency of the executive branch of the Government is not a proper forum to consider whether the recordation provisions of FLPMA are constitutional. The United States Court of Appeals for the Tenth Circuit has stated that the Secretary of the Interior has broad authority to promulgate rules and regulations to aid him in his administration of the public lands, and that the regulations he has promulgated to implement FLPMA do not transcend such authority. Topaz Beryllium Co. v. United States, No. 79-2255 (10th Cir. May 21, 1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Gail M. Frazier  
Administrative Judge